

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.5088 OF 2014

Nasreen Gulam Mehboob Naik

..Petitioner

Versus

Gulam Mehboob Ismail Naik and another

..Respondents

Mrs. Farhana Shah for the Petitioner.

Shri. Imtiyaz A. I. Patil for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 20th JANUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 10.10.2014 passed by the Learned Additional Sessions Judge, Greater Bombay, by which order, the Appeal filed by the Respondent herein came to be partly allowed and the interim maintenance granted to the Petitioner was reduced from Rs.6000/- to Rs.3000/- per month.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner herein has filed an application for maintenance under Section 12 of the Domestic Violence Act (For short "the Said Act"). The Petitioner has also filed an application for residence under Section 19 of the Said Act. The instant Petition concerns only the application filed for maintenance. In so far as application for maintenance is concerned, the Petitioner has filed interim

application therein for the grant of interim maintenance. It was the case of the Petitioner that the Respondent herein was working as a Technician in Dubai, but now returned to Mumbai and is earning Rs.50,000/- per month. It was her case that the Respondent is having sufficient income to provide maintenance to the Petitioner. However, he is not doing so, the Petitioner therefore prayed for the grant of maintenance in the sum of Rs.20,000/- per month. The application was opposed to on behalf of the Respondent, the case of the Petitioner was denied. As indicated above, in the application, the Petitioner filed the instant application for interim maintenance. The Learned Metropolitan Magistrate 10th Court, Mumbai has considered the said application and granted interim maintenance in the sum of Rs.6000/- per month. The Learned Metropolitan Magistrate observed that since the Respondent herein was a Technical hand and previously employed in Dubai, it would be reasonable to infer that he must be earning Rs.600/- per day after his return to Mumbai. Proceeding on the said premise, the Learned Metropolitan Magistrate deemed it appropriate to fix the interim maintenance at Rs.6000/- per month. Significantly, the Respondent did not produce any material to indicate his actual income after his return to Mumbai, so as to controvert the case of the Petitioner as stated in the application.

3 The Respondent aggrieved by the said order dated

01.04.2014 passed by the Learned Metropolitan Magistrate, 10th Court, Mumbai, challenged the same by way of an Appeal before the Sessions Judge, Greater Bombay. Pertinently, before the Sessions Court, the Respondent produced a certificate purportedly issued by his employer one Konkan Tours and Travels. The said certificate is dated 20.10.2013. It is stated in the said certificate that the Respondent is working in their organization on daily wages and drawing Rs.300/- per day and that he is getting Rs.9000/- per month by way of salary. Significantly, in the said certificate the date when the Respondent has joined has not been mentioned, as also his exact designation. The Appellate Court as indicated above has reduced the interim maintenance granted from Rs.6000/- to Rs.3000/-. This the Appellate Court has done by taking into consideration the said certificate dated 20.10.2013, which as indicated above was for the first time produced before the Appellate Court. It is required to be noted that said certificate is dated 20.10.2013, whereas the Learned Metropolitan Magistrate decided the matter on 01.04.2014 i.e. a good six months after the said certificate was issued to the Respondent. Hence the question that begs an answer is as to why the said certificate was not produced before the Learned Metropolitan Magistrate whilst he was adjudicating the application.

4 Be that as it may, in my view, taking a practical approach to

the matter and considering the cost of living in today's times, wherein daily expenses for a individual person can be said to be more than Rs.100/-, it would be just and proper to interfere with the impugned order passed by the Sessions Court. In my view, the maintenance which has been reduced by the Sessions Court is required to be enhanced by a sum of Rs.1000/- per month. In that view of the matter, the impugned order in so far as it reduces the maintenance to Rs.3000/- is set aside. The interim maintenance is accordingly enhanced from Rs.3000/- to Rs.4000/- per month. The said amount would be payable from October 2016 as the earlier amount at the rate of Rs.3000/- per month has already been paid upto September 2016. Needless to state that the application filed under Section 12 of the Said Act would be considered on its own merits and in accordance with law uninfluenced by the instant order. The Petition is allowed to the aforesaid extent and is accordingly disposed of.

[R.M.SAVANT, J]